

BEAR MUFFLER MASTERS, INC., and	§	
STEVE SCALIA,	§	
	§	No. 452, 2010
Defendants Below,	§	
Appellants,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
FRANCIS X. GARNESKI, JR.,	§	
	§	C.A. No. 07C-07-081
Plaintiff Below,	§	
Appellee.	§	

Decided: February 22, 2011

ORDER

1) Steve Scalia appeals from a Superior Court Order denying his motion to vacate a default judgment. He argues that he was never properly served. The trial court found that he had notice of the action and delayed too long before seeking relief under Superior Court Rule 60 (b). We find no abuse of discretion and affirm.

2) In September 2007, Francis X. Garneski, Jr., filed this action against Scalia and the business he owned and operated, Bear Muffler Masters, Inc. Garneski alleged

that, because of Scalia and Bear Mufflers' negligent failure to warn, he was assaulted by Scalia's nephew and suffered personal injuries.

3) The Sheriff's return certifies that he served Bear Muffler Masters, Inc., by leaving a copy of the complaint and summons with Scalia. It does not state that Scalia, also, was served.

4) By Order dated September 23, 2008, the Superior Court granted Garneski's motion for default judgment against both defendants. After an inquisition, the trial court entered a judgment in the amount of \$200,000 against the defendants, jointly and severally.

5) In June 2010, Scalia filed a motion to vacate the default judgment. He claimed that the trailer he had been living in burned down in January 2007, and that the business was closed. He denied having been served with the complaint and claimed to have learned about the default judgment in the Spring of 2009.

6) At the hearing on Scalia's motion to vacate, his counsel admitted that Scalia had notice of the lawsuit when service was made on Bear Mufflers in October 2007. The court found that actual notice constituted effective service.¹

7) The trial court then considered Scalia's argument that his delay constituted excusable neglect. Scalia maintained that he did not know about the default judgment

¹*Williams v. State*, 1992 WL 135145 (Del. Supr.).

until the Spring of 2009, and his counsel explained that the motion to vacate was not filed for 14 months after that because he was awaiting assurances that he would be paid for his services. The trial court denied the motion, noting that it would create a bad precedent for the court to vacate a default judgment almost two years after it was entered when the only reason for the delay was a claim of “excusable neglect.”

8) We find that the trial court acted well within its discretion.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

²*See: Shremp v. Marvel*, 405 A.2d 119 (Del. 1979).